

14 CV 4968

JUDGE ENGELMAYER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOR 725 8TH AVENUE LLC,

Plaintiff,

-against-

SHANTHIOA GOONETILLEKE a/k/a
MARTIN GOONETILLEKE and
MARIE GOONETILLEKE

Defendants.
-----X

Civil Action No. _____

COMPLAINT



Plaintiff Thor 725 8th Avenue LLC ("Thor"), through its attorneys Matalon ♦ Shweky ♦ Elman PLLC, complaining of defendants Shanthioa Goonetilleke a/k/a Martin Goonetilleke and Marie Goonetilleke (collectively, the "Guarantors"), alleges:

INTRODUCTION

1. Thor, a landlord, brings this action to recover more than \$2 million owed by Guarantors pursuant to a guaranty of a tenant's obligations under a commercial real estate lease. Thor also demands the attorneys' fees, costs and expenses it has and will incur in connection with enforcing its rights under the guaranty.

PARTIES

2. Plaintiff Thor is a limited liability company, all members of which are citizens of New York.

3. Upon information and belief, defendant Martin Goonetilleke is a citizen of New Jersey residing at 278 McCould Drive, Fort Lee, New Jersey 07024.

4. Upon information and belief, defendant Marie Goonetilleke is a citizen of New

Jersey residing at 278 McCould Drive, Fort Lee, New Jersey 07024.

JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to 28 U.S.C. § 1332. There is complete diversity among the adverse parties, and the amount in controversy, without interest and costs, exceeds \$75,000.

6. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this action occurred in the Southern District of New York.

FACTS

7. DVD Depot Inc. ("Tenant") entered into a Triple Net Lease with 725 8th Avenue Realty, LLC ("Original Landlord") dated January 14, 2004 ("Lease") for the building located at 725 8th Avenue, New York, New York ("Premises").

8. The Lease was amended from time to time. One amendment included a rent reduction, pursuant to which Tenant would pay a decreased annual rent and was not required to pay the Premises's real estate taxes. That reduction, however, was contingent on Tenant not defaulting under the Lease, and expressly provided that if Tenant defaulted, it would lose the benefit of any reductions it received and all charges would be reinstated and immediately due and payable.

9. In consideration of, and inducement for, the execution of the Lease, the Guarantors executed a guaranty, dated December 22, 2003 ("Guaranty"), in which Guarantors unconditionally guaranteed to the Original Landlord, its successors and assigns, the full and prompt payment of all amounts payable by Tenant and the full and timely performance and observance of all the covenants, terms, conditions and agreements to be performed and observed by Tenant under the Lease.

10. On or about August 16, 2013, Thor entered into a contract with the Original Landlord to purchase the Premises.

11. On September 18, 2013, Original Landlord and Tenant entered into an Amendment to Occupancy Agreement, which specifically inured to the benefit of successors of Original Landlord. The Tenant and Guarantors also executed a Tenant Estoppel Certificate, acknowledging that, among other things, the Guaranty remained in full force and effect.

12. On September 25, 2013, Original Landlord assigned to Thor its rights and interests under the Lease.

13. Also on September 25, 2013, Old Landlord conveyed the Premises to Thor by way of a bargain and sale deed. Accordingly, Thor became Tenant's landlord and the Guaranty remained in full force and effect for the benefit of Thor.

14. Prior to September 23, 2013, Tenant, and in turn the Guarantors, owed approximately \$200,000 under the Lease. As of the date hereof, and for the period following Thor's acquisition, Tenant was in default of its monetary obligations in an amount equal to approximately \$222,000. Further, Tenant's default reinstated all of the reductions it previous received – including over \$1 million in annual rent reductions and over \$600,000 in real estate taxes – all of which are immediately due and payable. In sum, then, Guarantors presently owe at least \$2 million.

15. Guarantors have failed to pay the amount owed under the Guaranty.

FIRST CAUSE OF ACTION
(Breach of Guaranty)

16. Plaintiff repeats and realleges the allegations of paragraphs 1 through 15 as if set forth in full here.

17. Guarantors are in breach of the Guaranty for failure to make the required payments.

18. Guarantors will continue to be liable for additional amounts that may accrue under the Lease.

SECOND CAUSE OF ACTION
(Costs of Enforcement)

19. Plaintiff repeats and realleges the allegations of paragraphs 1 through 18 as if set forth in full here.

20. Guarantors are liable for the costs of enforcing the Guaranty.

21. Thor has incurred, and will continue to incur, costs to enforce the Guaranty, including attorneys' fees.

22. Accordingly, Thor is entitled to recover from Guarantors an amount to be proven at trial, inquest or on motion.

WHEREFORE, plaintiff Thor 725 8th Avenue LLC demands a money judgment against the defendants Martin and Marie Goonetilleke in an amount to be determined upon trial, inquest or motion, but not less than \$2 million, together with reasonable attorneys' fees, costs and disbursements and such other relief as the Court deems just and proper.

Dated: New York, New York
July 2, 2014

MATALON ♦ SHWEKY ♦ ELMAN PLLC

By: 

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